

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4963 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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A RAJAMANI

Versus

INDIAN OIL CORPORATION

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Appearance:

MR PM THAKKAR for Petitioner

NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 07/04/99

ORAL JUDGEMENT :

The petitioner in this petition filed under Article 227 of the Constitution of India, challenges the award of the Labour Court, Rajkot made on 9.8.1995, insofar as it denies back wages to the petitioner.

2. The dispute as to whether the petitioner should be reinstated on his original post with full back wages was referred for adjudication under sec.10(1)(c) of the Industrial Disputes Act, to the Labour Court. As per the statement of claim of the workman, he was working as Clerk -cum -Typist in Indian Oil Corporation at the relevant time at Jamnagar. He had been served with the charge sheet dated 24.5.1968 and came to be dismissed on 28.5.1968. Thereafter, the matter was referred to the National Industrial Tribunal, Dhanbad, during the

pendency of which the employer withdrew the dismissal order and reinstated the workman. He was again served with the charge sheet for the same charge and after inquiry he came to be dismissed on 1.5.1969. The appeal preferred against the dismissal was rejected. According to the workman the charges levelled against him were vague and the punishment imposed was excessive.

3. The Indian Oil Corporation contended that there was a misconduct committed by the petitioner inasmuch as he had falsified about 53 postal receipts during 28.6.1967 to 20.11.1967 by dishonestly altering the figures of Postal commission charges therein and thereby cheating the Corporation with a view to make monetary gains. Since there was a procedural defect, the earlier dismissal order was withdrawn and the workman was proceeded against afresh. The workman had specifically admitted that he had personally handled the transactions in question. According to him he had committed mistake in not checking the receipts properly. He had offered that the deficit amount of Rs.33.10 paise may be recovered from his salary.

4. As per the charge sheet, exh.26, during the period from 28.6.1967 to 20.11.1967 the workman had cheated the Corporation by manipulating the figures on various receipts of payment issued by the Post Office, as shown in the statement and had claimed and realised Rs.33.10 paise in excess of the actual amount paid towards the postal charges. The workman had thus, committed wilful falsification of postal receipts with a view to claim the amount in excess of that what was actually spent. The reply, exh.28 which was filed by the workman to the charge sheet and his reply, exh.27 to letter dated 25.4.1968 of the Corporation indicated that the workman had admitted his lapse, according to the Corporation. The workman had according to the Labour Court admitted his carelessness in not checking the postal receipts, but he had not admitted misappropriation.

5. It was an admitted fact that the workman used to go to Post Office for booking the articles. He used to hand over articles along with the amount to the Clerk of the Post Office. In such event ordinarily there would be no occasion of manipulation in the receipts before they are issued. However, in several receipts during the period in question payment of excess amount was noticed and the figures in the receipts were found to have been manipulated. The Labour Court, however, seems to have been impressed by the workman's explanation that he had

not checked the postal receipts and that he was only careless. There would not be, ordinarily, a series of mistakes in postal receipts over a period of time and that too not being noticed by a person, who had been regularly visiting the Post Office for booking articles. However, the explanation that there was only carelessness on the part of the workman was found to be acceptable by the Labour Court and on that basis, it was found that there was only a minor misconduct and it was noted that the workman had agreed to get effected recovery of Rs.33.10 paise from his salary. That is how the Labour Court scaled down the matter observing that the punishment of dismissal was not warranted against the misconduct of negligence. However, keeping in view the facts the Labour Court while awarding proper punishment felt that withholding of back wages for the period for which he did not serve would be sufficient punishment.

6. It was not the case of the workman that he was not gainfully employed during the long period of 16 years. Therefore, while keeping in view that non payment of back wages would be sufficient punishment to him the Tribunal also took into account that there was no evidence to show as to whether he was or was not gainfully employed. Since there admittedly was no assertion by the workman that he was not gainfully employed it would be appropriate to presume that over a period of 16 years he could not have remained without being gainfully employed. Furthermore, since the misconduct of carelessness and negligence was held to be proved there was no warrant for rewarding the petitioner the back wages for a period of 16 years during which period he did not work at all with the Corporation and most likely he would have been employed elsewhere. The impugned decision is based on valid reasons and does not warrant any interference by this Court in its supervisory jurisdiction under Article 227 of the Constitution of India.

7. The petition is, therefore, rejected. Rule is discharged with no order as to costs.

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